

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA,

Case No. 1:21-CR-612

Plaintiff,

-vs-

JUDGE PAMELA A. BARKER

XAVIER TAYVON SMALL,

Defendant.

MEMORANDUM OPINION & ORDER

This matter is before the Court upon Defendant Xavier Tayvon Small's Request for a Reduction in Sentence under 18 U.S.C. § 3582(c)(2) filed on July 5, 2023 ("Defendant's Motion"). (Doc. No. 47.) On July 10, 2023, the United States of America filed the Government's Response in Opposition to Defendant's Motion ("the Government's Response"). (Doc. No. 48.) Although given the opportunity to do so, Defendant did not file a reply in support of Defendant's Motion. Thus, Defendant's Motion is now ripe for a decision.

In Defendant's Motion, Defendant seeks a reduction in his sentence pursuant to a proposed, but not yet effective, amendment to the Sentencing Guidelines which, if applied retroactively because he was sentenced on September 21, 2022, would reduce his criminal history points by two or the number of criminal history points he received under USSG §4A1.1(d) for committing the offense he was convicted of while on probation. (Doc. No. 38, PageID # 254, ¶ 50.) Such amendment in the Sentencing Guidelines, if not modified by and approved by Congress, and if applied retroactively, would reduce Defendant's criminal history points to 9, placing him in a Criminal History Category of IV, instead of V.

However, as the Government points out, Defendant's Motion is premature because: the proposed amendments are set to take effect on November 1, 2023, but only if the amendments are not modified or disapproved by Congress; and whether the amendment that would affect Defendant's criminal history points and category will be made retroactive has not yet been decided.

Accordingly, Defendant's Motion is DENIED.

IT IS SO ORDERED.

Date: July 31, 2023

s/Pamela A. Barker
PAMELA A. BARKER
U. S. DISTRICT JUDGE